Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the SBC Companies for	)	
Forbearance from Regulation as a Dominant Carrier	)	CC Dkt 98-227
for High Capacity Dedicated Transport	)	
Services in Specified MSAs	)	

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") pursuant to Public Notice DA 98-2509, released December 8, 1998, hereby submits its initial comments on the above-referenced petition filed by SBC Communications, Inc. ALTS is the national trade association representing facilities-based competitive local exchange carriers.

The SBC petition asks that the Commission, pursuant to Section 10 of the Communications Act of 1934, as amended, exercise its authority to forbear from regulating the SBC Companies[1] as dominant carriers with respect to high capacity dedicated transport services in portions of specified Metropolitan Statistical Areas (MSAs). SBC argues that the market for high capacity dedicated transport services has become "highly competitive" and that "competition has expanded enormously" in the 14 MSAs for which regulatory relief is sought and that because the markets are competitive SBC does not have sufficient market power to raise and maintain prices above competitive levels. Therefore, according to SBC, its companies have insufficient market power to justify regulatory treatment as a dominant carrier.[2] SBC argues

[1] These are: Pacific Bell, Nevada Bell and Southwestern Bell Telephone Company.

[2] The fourteen MSAs for which relief is requested are: Little Rock, Arkansas: Los Angeles, California; Sacramento, California; San Diego, California; San Francisco, California,

that the record developed in the Access Charge Reform Order is out of date and regulation of these services is no longer necessary to protect consumers against unfair or discriminatory pricing or practices.

The services for which SBC seeks regulatory relief are those it designates as "high capacity dedicated transport services." These services are defined as "those special access services, switched access entrance facilities, and switched access direct trunked transport services that operate at DS1 and higher transmission speeds." (Petition at n. 2). Quality Strategies, a firm that conducted market studies for SBC further defines the "high capacity market" as the "universe of DS-1 and above circuits used either for end user customer's traffic (Provider) or for carrier transport (Transport)."[3]

SBC argues that the Commission must forbear from enforcing any of its access charge rules that it does not enforce upon the SBC companies' competitors, including all the requirements of Part 61 (tariffing) and Part 69 (access charges). In effect, SBC asks that the Commission allow the companies to file tariffs on one day's notice and to set prices that "reflect market conditions in a particular geographical area." (Petition at ii) It requests that the companies be able to offer contract-based pricing, to offer volume and term discounts, and promotional pricing options.

San Jose, California; St. Louis, Missouri; Reno, Nevada; Oklahoma City, Oklahoma; Austin, Texas; Dallas/Ft. Worth, Texas; El Paso, Texas; Houston; Texas and San Antonio, Texas.

[3] "End users utilize high capacity circuits to connect two business locations in the same LATA (point-to-point) or to connect to a carrier's point-of-presence (POP)(special access). Carriers utilize high capacity transport circuits to provide links between POPs, central offices and tandems." Quality Strategies, SBC High Capacity Market Study, 1998, at 2.

I. THE COMMISSION SHOULD NOT CONSIDER THE SBC PETITION OUTSIDE OF THE ACCESS CHARGE REFORM PROCEEDING.

The Commission has an ongoing proceeding in which issues of pricing flexibility for ILEC access services are raised. In order to conserve Commission resources and preserve the integrity of the Commission's procedural processes, the Commission should consider the SBC request as an ex parte filings in the Access Charge Reform proceeding. Despite SBC's protestations that the record of the Access Charge Reform docket is out of date, it was only three and a half months ago that the Commission released a public notice asking parties to update and refresh the record in the Access Charge Reform and Price Cap dockets.[4] The Commission sought additional comment because several parties had filed petitions or ex partes proposing significant changes to the Commission's Access Charge Reform and Price Cap proceedings. In particular, the Commission had received proposals for pricing flexibility for ILECs. Thus, as SBC recognizes,[5] the Commission has before it a number of proceedings in which the remedy sought by SBC may be adopted by the Commission. Until the Commission completes its consideration of the pricing flexibility proposals in those dockets it would be premature for the Commission to grant the SBC petition.

As the Commission is well aware, SBC is the second regional Bell Operating Company ("RBOC") to ask the Commission to forbear from regulating it as a dominant carrier with respect

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[4] Public Notice FCC 98-256 (released October 5, 1998). See Access Charge Reform, CC Dkt No. 96-262, 12 FCC Rcd 15982 (1997), aff'd sub nom. Southwestern Bell Tel. Co. v. FCC, No. 97-2618 (8th Cir. Aug. 19, 1998); Price Cap Performance Review for Local Exchange Carriers, CC Dkt 94-1, 12 FCC Rcd 16642 (1997), appeal pending sub nom. USTA v. FCC, No. 97-1469 (D.C. Cir.). The Commission has received numerous comments in response to its request for updated information.

[5] See SBC Petition at n.3.

to certain high capacity services in certain MSAs. In 1998 U S WEST filed a similar petition with respect to "high capacity telecommunication services" in the Phoenix, Arizona MSA and, more recently, U S WEST has sought similar relief with respect to the Seattle, Washington MSA.[6] If the Commission attempts to deal with each of these requests individually, rather than in the Access Charge Reform docket, it will be barraged with dozens of separate petitions for forbearance that will quickly strain the Commission's already overburdened staff.

II. ANY PRICING FLEXIBILITY MUST BE PRECEDED BY AN ELIMINATION OF ALL BARRIERS TO COMPETITIVE ENTRY, AND THE ESTABLISHMENT OF SIGNIFICANT EFFECTIVE COMPETITION.

If the Commission does not defer consideration of the SBC petition until it has adopted more general rules on regulatory relief for ILEC provision of services for which competition is developing, it must deny the petition. ALTS has always stated that its members would be the first to applaud if competition had developed to the degree that the ILECs no longer maintained market power. In fact, that is what each member of ALTS is seeking. But, the ILECs are not there yet. The members of ALTS have always also recognized and urged the Commission to be very careful in its analysis of whether market conditions are such that regulatory relief can be

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[6] Petition of U S WEST Communications, Inc for Forbearance from Regulation as a Dominant Carrier in the Seattle, Washington MSA, CC Dkt No 99-1 (filed Dec. 30, 1998); Petition of U S WEST Communications, Inc for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Dkt. No. 98-157 (filed Aug. 24, 1998). (In addition, today's Communications Daily reports that Bell Atlantic has filed a similar petition for certain of its MSAs. Communications Daily, January 21, 1999 at 2). In fact, these petitions are just another is a long series of attempts by the RBOCs to obtain regulatory relief from some of the Commission's access charge rules. Just last year SBC sought regulatory relief pursuant to the competitive necessity doctrine. See In the Matter of Southwestern Bell Telephone Co., CC Dkt 97-158. In all of these cases the Commission has found insufficient justification for the relief requested. The most recent filings justify the requests under a different legal theory (Section 10), but the essence of the requests is the same.

granted to the ILECs. As the Commission itself has recognized, the proper sequencing of ILEC pricing flexibility is critical.[7] All barriers to entry must be eliminated prior to the grant of pricing flexibility and competition must be well enough established that anti-competitive conduct by the ILECs could not easily eliminate such competition. Premature deregulatory actions could easily enable the ILECs, with their tremendous market power and resources, to squash any and all nascent competition.

The Commission cannot grant regulatory forbearance under Section 10 unless it makes a finding that enforcement of such regulation is not necessary to ensure that the charges or regulations are just and reasonable and are nondiscriminatory, that enforcement of such regulation or provision is not necessary for the protection of consumers and that forbearance is consistent with the public interest.

SBC's basic argument is that because it's market share in the 14 specified MSAs for high capacity dedicated transport services is between 49 and 75 percent, it no longer has market power and would not be able to price those services in an unreasonable or discriminatory manner.

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[7] In the First Report and Order in the Access Charge proceeding, the Commission discussed the effect that developing competition would have on the regulatory policies relevant to the incumbents and, specifically, regulatory and pricing flexibility. The Commission concluded that:

> where competition develops, we will provide incumbent LECs with additional flexibility, culminating in the removal of incumbent LECs' interstate access services from price regulation where they are subject to sufficient competition to ensure that the rates for those services are just and reasonable and are not unjustly or unreasonable discriminatory. (Order at para. 266 (emphasis added)).

The Commission made it clear, however, that competition must precede deregulation: "[d]eregulation before competition has established itself, however, can expose consumers to the unfettered exercise of monopoly power and, in some cases, even stifle the development of competition, leaving a monopolistic environment that adversely affects the interests of consumers." Id. at para. 270.

Putting aside for a moment the fact that it is impossible to determine the validity of SBCs "factual" predicate of the percentage of the market that it continues to hold[8] and even assuming that all the "facts" in the petition are accurate, SBC still has given the Commission no sufficient reason to forbear from regulating these services.

First, of course, there is a big difference between 49 percent of the market and 75 percent of the market. We note that the Commission did not grant significant regulatory relief to AT&T until it had lost approximately 45 percent of the market. In addition, there are very big differences between the interexchange market of the 1980s and the local access market of today. The barriers to entry to the interexchange market market were substantially lower than the barriers to entry to the competitive access and local exchange markets today and AT&T had less ability to discriminate or use predatory pricing against its competitors than ILECs have against their competitors.. The availability of volume discounts in the interexchange market made entry into that market relatively straightforward and facilities-based interexchange carriers did not have any dependence upon AT&T facilities in the provision of their business. In comparison, CLECs are dependent upon ILECs for interconnection and collocation of their equipment. As the Commission is well aware CLECs have had significant difficulty in obtaining adequate

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[8] SBC has submitted a study by Quality Strategies that purports to show that the SBC Companies have lost a percentage of the market in each of the indicated MSAs. The report, however gives little support for its conclusions. This fact alone should make the Commission very hesitant to grant any regulatory relief. Quality Strategies states that its results are based primarily on market research surveys and the market share conclusions are based upon equivalent circuits as opposed to revenues. These may or may not be appropriate bases for the conclusions, but the fact is that the numbers behind the results are not given, so ALTS and the SBC competitors have no ability to determine the validity of the results. Although the number of buildings on network are given for the competing carriers this obviously is not probative of the number of equivalent circuits provided by competitors.

collocation and interconnection to ILECs.[9] Thus, AT&T's ability to unreasonably foreclose or deter entry, or to stifle the competition that had developed was substantially smaller than SWB's ability to stifle competition in the competitive access and local exchange markets. Therefore, at the very least the Commission should not consider regulatory relief for ILECs until their competitors have effective and efficient access to ILEC networks as required by the Telecommunications Act.

In addition, ALTS believes that the product market that SBC has defined is not an appropriate market under Commission and other precedent. Nonetheless, even were the product market defined by SBC appropriate it has not shown that "regulation is not necessary to ensure that the charges, practices, classification, or regulations by, for, or in connection with [that] service are just, reasonable and not unjustly or unreasonable discriminatory." SBC seems only to argue that it has little ability to maintain prices well above those of its competitors and that consumers will not be harmed if its petition is granted. However, SBC fails to address its ability to cross-subsidize its high capacity services with revenue obtained from product areas in which it indisputably retains dominant market power.

As the dominant provider of local exchange and local access services in all the MSAs for which relief is sought, the SBC companies clearly have the ability to lower prices to predatory levels, thereby destroying whatever competition may have developed. Such predatory pricing might benefit consumers in the short term, but clearly would not be in the consumers' best interests in the long run. ALTS is not contending that regulatory forbearance for any service is inappropriate until the ILECs are non-dominant in all services, but certainly the ability to cross-

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[9] See, e.g., Comments of ALTS in In re Deployment of Wireline Services Offering Advanced Telecommunications Services, CC Dkt. 98-147 (filed Sept. 25, 1998).

subsidize from non-competitive services must be considered.[10] SBC provides no information as to the percentage of its revenues that are derived from the "high capacity dedicated transport services" and thus it is impossible to determine or analyze the extent to which it can use its monopoly revenues to offset predatory prices.[11] Predatory pricing would be especially likely to succeed in discouraging new entrants in the local access and local exchange markets where the initial investment required to enter the market is substantial.

Finally, we note that when SBC attempted to attain regulatory flexibility under the competitive necessity doctrine a little more than a year ago, the Commission specifically found that SBC should not be granted the right to individually price its access services because of "serious concerns regarding the potential for . . . anticompetitive market foreclosures."[12] Despite the new legal reasoning in its current request and additional (unsupported) information on market share, SBC has not shown how circumstances have changed in the past year and a half to justify a different result here.

CONCLUSION

The Commission should deny the SBC application. The Commission already has an open proceeding in which the Commission can consider taking small steps to forbear from

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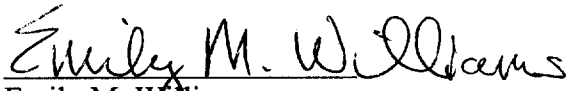
[10] In In re Southwestern Bell Telephone Co., CC Dkt No. 97-158 (released November 14, 1997), the Commission stated "Allowing SWBT to respond to RFPs before its market is open to competition creates a situation where SWBT can disadvantage its rivals by denying them access to key inputs." (para. 51).

[11] For a discussion of predatory pricing and the effects it can have on competitive entry, see Ordover, Janusz A. and Saloner, Garth, "predation, Monopolization, and Antitrust" in Handbook of Industrial Organization, (Schmalensee, Richard and Willig, Richard eds. 1989).

[12] Id.

applying certain regulations if that becomes appropriate. In addition SBC has not satisfied any of the statutory prerequisites for grant of forbearance.

Respectfully Submitted,



Emily M. Williams
Association for Local
Telecommunications Services
888 17th St., N.W. Suite 900
Washington, D.C. 20036
(202) 969-2595

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Association for Local Telecommunications Services was served January 21, 1999, on the following persons by first-class mail or my hand service, as indicated.

Emily M. Williams

Emily M. Williams

Robert M. Lynch
Michael J. Zpevak
Thomas A. Pajda
SBC Companies
One dBell Plaza, Room 3003
Dallas, Texas
75202

Jane Jackson
Chief, Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

ITS
1231 - 20th Street, N.W.
Washington, D.C. 20036